

Sullivan County Electric, Inc. and International Brotherhood of Electrical Workers Local Union #363, AFL-CIO. Cases 3-CA-18054, 3-CA-18117, and 3-CA-18229

October 28, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On September 12, 1994, the National Labor Relations Board issued an Order in this proceeding, in which the Board ordered the Respondent, *inter alia*, to make whole discriminatee Michael McCabe for all losses of earnings suffered as a result of the Respondent's unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.¹ On March 3, 1995, the United States Court of Appeals for the Second Circuit entered a judgment enforcing the Board's Order. A controversy having arisen over the amount of backpay due the discriminatee under the terms of the Board's Order, enforced by the court, the Acting Regional Director for Region 3 on May 31, 1996, issued a compliance specification and notice of hearing alleging the amount of backpay due to the discriminatee and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations.

By letter dated July 30, 1996, the Respondent filed an answer to the compliance specification which stated in its entirety:

In response to your letter of July 10, 1996 we still contend that we do not owe McCabe any money. We have a signed statement from him that states he was paid in full for all wages. And there is no law to our knowledge that states that we have to give equal amounts of the same type of work to all employees. I also know that the only reason this whole case has been energized again after so long is that John Sager stirred it up. This tells me that he is the shaker and mover of this whole thing. We made an offer back last year of \$1500 to settle the matter including interest. We have been waiting for your response to that offer. Your figures were inaccurate originally because you included employees that were laborers in the comparison. We now see that you have refigured the alleged amount owed, and our response is to pay you the extortion money only to get the whole thing over with. Our offer is \$1500 in total. Please accept this in the interest of all concerned.

I am enclosing a copy of the date we received the letter from you, which shows we are within

the response time allowed. Notice your letter was made 7/10/96, received by us only about a week ago. I was away for awhile, and my wife gave it to me only last week.

Thank you for your honest attention in this matter.

Thereafter, on August 13, 1996, the General Counsel filed with the Board a Motion for Summary Judgment. The General Counsel alleges that the Respondent's letter, to the extent that it can be construed to be an answer, fails to comport with the substantive requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations, and raises no litigable issues. Therefore, the General Counsel moves that the answer be stricken, the allegations in the compliance specification be deemed to be admitted as true without the taking of evidence, and that summary judgment be granted.

On August 15, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent has not filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations state:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of*

¹ The Respondent filed no exceptions to the decision of Administrative Law Judge Joel P. Biblowitz, and the Board thereafter issued an unpublished Order pursuant to Sec. 102.48 of the Board's Rules and Regulations.

specification.—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The compliance specification duly served on the Respondent states that, pursuant to Section 102.56 of the Board's Rules and Regulations, the Respondent "shall, within 21 days of this specification, file . . . an answer To the extent that such answer fails to deny [the] allegations of the specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them."

We agree with the General Counsel that the Respondent's July 30, 1996 answer is substantively deficient. The Respondent's answer does not specifically take issue with the precise allegations of the specification. Instead, the answer initially appears to dispute the merits of the underlying unfair labor practice findings and relies principally on its stated monetary settlement

offer of \$1500, which is substantially less than the amount owed as pleaded in the specification. In short, the answer does not fairly meet the substance of the specification's allegations, or offer or set forth in detail supporting figures, and alternative premises. *Robincrest Landscaping & Construction*, 303 NLRB 377, 378 (1991); *Challenge-Cook Bros. of Ohio*, 295 NLRB 435, 437-438 (1989). Accordingly, we agree with the General Counsel that the Respondent's answer fails to comply with the requirements of Section 102.56(b) or (c).²

We therefore strike the Respondent's answer as substantively deficient, deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. We conclude that the net backpay due discriminatee Michael McCabe is as stated in the compliance specification, and we will order payment by the Respondent of that amount to McCabe, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Sullivan County Electric, Inc., Bradley, New York, its officers, agents, successors, and assigns, shall make whole Michael McCabe by paying him \$2,065.80, plus interest and minus tax withholdings, if any, required by Federal and state laws.

²In its answer, the Respondent states that the figures "originally" set forth by the Region "were inaccurate" but that the alleged amount owed had now been "refigured." The Respondent then states that it is willing to pay \$1500 as a settlement of the matter. It appears that this section of the Respondent's answer disputes generally the accuracy of an alleged "original" computation but does not specifically put at issue the details or the premises of the present specification at issue. Accordingly, it raises no litigable issue.